IN THE SUPREME COURT OF IOWA

NO. 11-2022



DANNY HOMAN, WILLIAM A.DOTZLER, JR., BRUCE HUNTER, DAVID JACOBY, KIRSTEN RUNNING-MARQUARDT, and DARYL BEALL,
*Plaintiffs-Appellees/Cross-Appellants*,

v.

TERRY E. BRANSTAD, Governor of the State of Iowa,
*Defendant-Appellant/Cross-Appellee.*

On Appeal from the District Court for Polk County
The Honorable Brad McCall

# FINAL REPLY BRIEF OF APPELLANT/CROSS-APPELLEE GOVERNOR TERRY E. BRANSTAD

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## INTRODUCTION

Plaintiffs make several arguments in their response, but they lead with this one: "Appellant vetoed only the condition and not the accompanying appropriation, making it an improper item veto under *Welden*." Pls. Br. 12. Plaintiffs miss the point. The Governor does not dispute that he must veto the appropriation that accompanies a "condition," as that term has been defined by this Court. He disputes that the office-closure provision is a condition at all. Under *Turner*, it is not.[1]

Likely understanding as much, Plaintiffs claim that *Turner* has been "modified." That is simply not true. All the relevant post-*Turner* cases of this Court have involved *express* conditions—probably because most legislators know better after *Turner* than to challenge the veto of an *implicit* condition. *Turner* is still good law, and Governor Branstad properly relied on its holding when striking the office-closure provision.

Plaintiffs would like this Court to overrule *Turner*; that much is clear. But Plaintiffs offer no justification for doing so. The *Turner* rule is easy to apply and gives clear guidance to the political branches. It should be reaffirmed, and the district court's decision should be reversed.

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[1] *Turner v. Iowa State Highway Commission*, 186 N.W.2d 141 (Iowa 1971).

## REPLY TO PLAINTIFFS' RESPONSE

### I. The Office-Closure Provision is A Separate Item Subject to Veto

#### A. This Court has not altered the *Turner* rule.

Plaintiffs claim the *Turner* rule has been "modified and clarified" by this Court's item-veto decisions in *Welden*, *Rush*, *Colton*, *Junkins I*, *Junkins II*, *Welsh*, and *Rants*.[2] It has not.

In *Junkins I*, *Junkins II*, and *Rants* the Court did not even consider whether the vetoed provisions were "items"; the question was whether the provisions appeared in an "appropriations" bill. *Junkins I*, 421 N.W.2d at 134-35; *Junkins II*, 448 N.W.2d at 483-85; *Rants*, 684 N.W.2d at 207-10. The Court's holdings in those cases thus could not have modified the *Turner* rule.

On the other hand, in *Welden*, *Rush*, *Colton*, and *Welsh* the Court did address whether Governors Ray and Branstad properly vetoed an "item" in an appropriation bill. But the Court upheld the veto in *Colton* and one of the vetoes in *Welsh*. And more fundamentally, none of those cases addressed circumstances like those present here, where legislators claim to have

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[2] *Welden v. Ray*, 229 N.W.2d 706 (Iowa 1975); *Rush v. Ray*, 362 N.W.2d 479 (Iowa 1985); *Colton v. Branstad*, 372 N.W.2d 184 (Iowa 1985); *Junkins v. Branstad*, 421 N.W.2d 130 (Iowa 1988) (*Junkins I*); *Junkins v. Branstad*, 448 N.W.2d 480 (Iowa 1989) (*Junkins II*); *Welsh v. Branstad*, 470 N.W.2d 644 (Iowa 1991); *Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004).

created a condition despite not expressly saying so in their bill. To the contrary, all of the vetoed provisions in *Welden*, *Rush*, *Colton*, and *Welsh* specifically indentified and conditioned an appropriation. [3] (Indeed, in some instances the vetoed language was a dependent clause of the appropriation itself.) [4]

Plaintiffs are correct on one point: The legislature doesn't need to use "magic words" to create a condition. But that is nothing new. *Turner* does not require magic words, and the Governor is not contending that it does. Plaintiffs spin the argument that way to make the *Turner* rule appear unreasonably formalistic. It's not. If the legislature wants to create a condition, it can do so simply by expressly (1) identifying the appropriation and (2) stating how that appropriation is limited or conditioned.

The office-closure provision does neither. It states:

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[3] Def. Br. 16-17 (discussing the vetoes in *Welden*); *Rush*, 362 N.W.2d at 480 (vetoed provision expressly limited the transfer of "funds appropriated by this Act"); *Colton*, 372 N.W.2d at 186 ("As a condition of the appropriation under section 4 . . . ");*Welsh*, 470 N.W.2d at 646 (vetoed a provision that expressly referred to and limited the "funds appropriated in subsections 5, 6, and 7"); Brent R. Appel, *Item Veto Litigation in Iowa: Marking the Boundaries Between Legislative and Executive Power*, 41 Drake L. Rev. 1, 25 (1992) (hereinafter, "Appel") (stating that the vetoed language in *Rush* was "very direct").

[4] *Welden*, 229 N.W.2d at 708 (appropriating money "[f]or salaries, support, maintenance, and miscellaneous purposes ~~for not to exceed seventy-two permanent full-time positions~~ . . ." (strikethrough in original to show veto); *Welsh*, 470 N.W.2d at 646 (appropriating money "[f]or increases in faculty salaries, . . . ~~that are in addition to the total faculty salaries paid during the fiscal year beginning July 1, 1988.")~~ (strikethrough added to show veto).

> The department shall not reduce the number of field offices below the number of field offices being operated as of January 1, 2009.

(App. 16). There is no mention of an appropriation and thus no express limitation or condition on an appropriation. Under *Turner*, this policy provision is a separate item subject to veto.

### B. There is no reason to alter the *Turner* rule.

Plaintiffs ask the Court to modify the *Turner* rule, but they offer no justification for doing so, other than the expediency of getting their way in this case. There is no good reason to alter the rule. It does not lessen the legislature's power. It does not give the Governor greater power. It simply requires the legislature to be clear when it intends to condition an appropriation so that all involved—including members of the General Assembly who are asked to vote on the measure—are on notice and can govern themselves accordingly.

The district court's "rule," on the other hand, requires judges to make case-by-case decisions about what political actors intended. That is an impossible and unnecessary task. The district court thought that it could glean the legislature's intent from "context," but the only objective indicator of what the legislature intended is what the legislature wrote and passed. Everything else is subjective. And wading into subjectivity is a dangerous

enterprise when deciding disputes between the political branches in item-veto cases.

Requiring legislators to say what they mean, on the other hand, creates certainty and predictability, which in turn keeps political disputes in the political arena.[5] That's a good thing. *See* Appel, 41 Drake L. Rev. at 19 ("[T]he court should not be called on to declare whether the legislature intended to restrict or qualify appropriations by implication, particularly in item veto cases in which delicate constitutional issues are involved.").

## II. The Definitions of "Field Office" and "Workforce Development Center" Were Subject to Veto, Despite Their Effect on Other Items.

The item-veto amendment does not prohibit Iowa's governors from striking items that affect other items. Plaintiffs do not dispute that, yet they choose to ignore the plain text of the Constitution in favor of inapposite quotes from *Welden*. Pls. Br. 21. *Welden* dealt with conditions—express

[5] Plaintiffs do not like this case referred to as a "political dispute." It's a constitutional one, they say. Pls. Br. 7. That is true, to a degree. All cases alleging a constitutional violation are constitutional cases. But that does not mean this Court should be naïve about the political nature of the dispute before it. Outside of item-veto litigation, a plaintiff cannot bring a constitutional challenge unless he or she has been specifically injured. *See Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008); *Alons v. Iowa Dist. Court for Woodbury Cnty.*, 698 N.W.2d 858, 864-874 (Iowa 2005). Plaintiffs—five legislators and the head of the public-employee union—do not claim to be injured by the Governor's veto. To be sure, they don't have to under current law, and the Governor has never claimed otherwise. *See Turner*, 186 N.W.2d at 147 (authorizing taxpayer standing for item-veto cases). But when the courts open their doors to political actors who have not been injured, some of those actors will undoubtedly use the judicial branch as a political weapon. Fortunately, the *Turner* rule minimizes that effect.

conditions that were part of the same item as the appropriations to which they referred. *Welden*, 229 N.W.2d at 707-708.

The definitions of "field office" and "workforce development center" stand alone as single items. And while they may have an effect on other items,[6] the people of Iowa did not prohibit their governor from using the item veto in that instance. *See* Def. Br. 23-25. Indeed, Iowa adopted a broad item-veto amendment in 1968 that grants quasi-legislative power to the State's governor when setting appropriations. And just as the legislature may draft several pieces of legislation in one bill, the governor "'should have a coextensive power of partial veto, to enable him to pass, in the exercise of his quasi legislative function, on each separable piece of legislation or law on its own merits."' *Turner*, 186 N.W.2d at 152 (quoting *State ex rel. Wis. Telephone. Co. v. Henry*, 260 N.W. 486, 492 (Wis. 1935)).[7]

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[6] Even on this point, Plaintiffs overstate their case. The definitions of "field office" and "workforce development center" appeared only in Sections 15 and 61. And those definitions applied to those sections only. *See* SF 517, Section 15(5) ("For purposes of this section"); SF 517, Section 61(5) (same). Plaintiffs nevertheless argue that these definitions applied to the field-office appropriations in Sections 17, 18, 26, 63, and 64. Pls. Br. 20. They misread the bill.

[7] Unlike the Virginia Constitution, the Wisconsin Constitution is virtually identical to the Iowa Constitution—save for the fact that the Wisconsin Constitution uses the word "part" and the Iowa Constitution uses the words "item" and "part" interchangeably. *See Turner*, 186 N.W.2d at 149 ("Both plaintiff and defendants emphasize the distinction between the words 'item' and 'part' or 'parts' as the same appear variously in the item veto provisions of our Constitution and of the constitutions of sister states. We are not persuaded there is any significant distinction between or among these terms.").

## III. The District Court's Remedy is Contrary to the Text of the Constitution.

Again, the debate over the proper remedy is irrelevant in this case; all of the provisions at issue were "items" and therefore the Governors' vetoes were permissible. Nonetheless, the Governor's opening brief explained what this Court already held in *Rants*: When a governor improperly vetoes a provision during the pocket-veto period, that provision never becomes law because the Governor did not affirmatively approve it. Def. Br. 26-8.

The parties agreed on this point in the district court; they disagreed only on whether the entire appropriation bill also falls, or just a portion of it. In the district court, Plaintiffs explained their position this way:

> [B]ecause [then-Governor Vilsack] had impermissibly utilized his item veto power during the period that his pocket veto power was enabled, it is unknown what action the Governor would have taken had he been aware that the item veto was impermissible. The same is true of Governor Branstad and SF 517. He failed to affirmatively approve SF 517 since he improperly exercised his item veto power. He may have approved 517 as a whole, disapproved it as a whole, or allowed the bill to lapse. Any ruling based on a prediction as to what he would have done would be "wholly inappropriate in light of the strict constitutional procedure crafted by our framers to assure the proper passage of laws that have acquired the approval of both the Legislature and the Governor." Therefore, in accordance with the *Rants* decision, *no portion of SF 517 became law* since the Governor and the Legislature did not both affirmatively approve it before the thirty-day period allowed for the Governor to consider bills passed "during the last three days of a session."

Pls. Br. Supp. MSJ at 17-18 (emphasis added) (quoting *Rants*, 684 N.W.2d at 212 and Iowa Const. Art. III, § 16) (internal citations omitted)).

Plaintiffs have reversed course on appeal. They now argue that a provision stricken by an unconstitutional veto must be reinserted into the bill, despite a governor's failure to approve it. And they now fault the Governor's reading of the Constitution (which they earlier shared) because it "would create a massive underfunding for . . . any future entities that will encounter an impermissible veto in their future budgets."[8] Pls. Br. 23. That may be true, but the Constitution trumps those kinds of pragmatic concerns. Plaintiffs agreed with that premise in the district court. Their change of heart is puzzling, to say the least.

But this is academic, nonetheless. Because the vetoed provisions are separate items, the district court's decision should be reversed, and Plaintiffs' Petition should be dismissed.

## RESPONSE TO PLAINTIFFS' CROSS-APPEAL

### IV. Sections 20 and 66 Are Items Subject to the Governor's Veto.

From the beginning, there has been no question what this case is really about: The closure of Workforce Development field offices. Plaintiffs

[8] That criticism is remarkably bold, considering that Plaintiffs asked the district court to strike down all of Senate File 517, which appropriates more than $60 million to six separate agencies.

disagree with it, but they do not have the numbers in the General Assembly to override the Governor's veto, or the legal authority to prevent it. The office-closure provision does not expressly limit or condition an appropriation, and is thus a separate item.

Plaintiffs therefore challenged the veto of two additional provisions in Senate File 517 that *do* contain express "condition" language, and they asked the district court to strike down the entire bill based on that challenge. The district court ruled in the Governor's favor on this issue; Plaintiffs now appeal.

Sections 20 and 66 state that "the department of workforce development shall not use any of the moneys appropriated *in this division* of this Act for purposes of the National Career Readiness Certificate Program." (emphasis added). Because of the express language, Plaintiffs claim these provisions are "conditions"—just a piece of an item—and that the Governor could not veto them unless he vetoed all of the corresponding appropriations. Plaintiffs are wrong. The *Turner* rule does not work in reverse—that is, labeling something a condition does not necessarily make it so. Because Sections 20 and 66 are attached to virtually every appropriation in Senate File 517, and because many of those appropriations are totally unrelated to the National Career Readiness Certificate Program, they are

single "items" under the Constitution. Or, to use this Court's terminology, they are "riders."

### A. The legislature cannot create a "super-item" by linking together an entire bill.

Sections 20 and 66 are attached to every appropriation in Divisions I and IV, which contain every appropriation in Senate File 517 save two. Thus, if Sections 20 and 66 are "conditions"—as Plaintiffs claim they are—then Governor Branstad could not veto them unless he also vetoed virtually every appropriation in the bill. That cannot be the law. Indeed, it is not.

In *Colton* this Court rejected the idea that the legislature can turn an appropriations bill into a series of cascading dominos, whereby the veto of one provision takes down the rest. *Colton*, 372 N.W.2d at 192 (explaining that the legislature may not link together provisions so that "the bill would become an inseverable whole, impervious to item veto"). If the opposite were true—if the legislature could craft a condition that linked together all appropriations in a single bill as one "super-item"—then the item veto would be nothing more than a general veto. Since the people of Iowa adopted the item-veto amendment to give their governor "a larger role in the state budgetary process," that is untenable. *Id.*

To be sure, the legislature is not prohibited from drafting such broad prohibitions. But when it does, it creates a "rider." And riders are "items" subject to veto. *Colton*, 372 N.W.2d at 192.

### B. Sections 20 and 66 are unrelated to many of the appropriations to which they are attached.

Plaintiffs' challenge fails for an additional reason: Many of the appropriations in Divisions I and IV have absolutely no relation to the National Career Readiness Certificate Program, or even the Department of Workforce Development.

This Court has made clear "the legislature may not block item veto by attaching 'unrelated riders' to an appropriation." *Welsh*, 470 N.W.2d at 649. To the contrary, a true condition or limitation must have a "sufficient relationship to the appropriation to which it is attached." *Colton*, 372 N.W.2d at 192. There is not a "sufficient relationship"—indeed, there is no relationship—between the National Career Readiness Program and many of the appropriations to which that provision is attached. They include: "the administration and support of historical sites," §1(4); the battle flag advisory committee "to stabilize the condition of the battle flag collection," §1(9); the World Food Prize, §2(6); the University of Northern Iowa for the "metal casting institute, the MyEntreNet internet application, and the institute of

decision making," §13(1); and the Iowa Finance Authority for the "rent subsidy program," §21(1).

Plaintiffs claim that Sections 20 and 66 are more "narrowly tailored"—that they apply only to funds specifically appropriated to Workforce Development. But that's not what Sections 20 and 66 say. They prohibit Workforce Development from using "*any* of the moneys appropriated" in Divisions I and IV. If those provisions are "conditions," then every ("any") appropriation in Division I and IV would be part of the same item.

Why the legislature linked all of these provisions together is not clear. Perhaps it did so as an attempt to insulate Sections 20 and 66 from veto. Or perhaps its over-inclusiveness was simply a result of poor drafting. Regardless, the result is the same: Sections 20 and 66 are riders. In this respect, the district court was correct in ruling that these provisions were subject to item veto.

But even if the Court accepts Plaintiffs' limited characterization of Sections 20 and 66, those provisions are still attached to appropriations unrelated to the National Career Readiness Certificate Program. Under Plaintiffs' Workforce-Development-appropriations-only theory, the Governor would need to veto the appropriation for "enhancing efforts to

investigate employers that misclassify workers" in order to veto Sections 20 and 66—which concern the National Career Readiness Certificate Program. Cleary there is not a "sufficient relationship" between these two things. *See Colton*, 372 N.W.2d at 192.

### C. The Court's holding in *Colton* modified *Turner*'s dictum.

Plaintiffs run from *Turner*'s holding when discussing the office-closure provision, but they rely exclusively on its *dictum* for their cross-appeal.

In *Turner*, like here, the legislature did not draft the office-closure provision as an express condition. But, like the legislature in this case, it did use express condition language elsewhere in the bill. Section 4 of the Highway Commission appropriations bill provided that "[n]o moneys appropriated by this act shall be used for capital improvements." *Turner*, 186 N.W.2d at 150. The Supreme Court cited this provision as an example of how the legislature could draft a condition if it intends to create one. *Id.* Plaintiffs point to that discussion and declare victory in their challenge to Sections 20 and 66, but in doing so, they overlook two things. *First*, the commentary about Section 4 in *Turner* was dictum. *Second*, and more important, the Supreme Court later clarified that the legislature cannot create a condition simply by labeling it as one. *See also Colton*, 372 N.W.2d at

188, 192 (rejecting the legislator plaintiffs' argument that "a 'condition' is any language of an appropriation bill that is germane to the whole act, *labeled as a 'condition'* and attached as a proviso to any other section or sections" (emphasis added)). As discussed above, a condition cannot link together an entire bill (or a significant portion of it). *Id.* at 192. And a condition cannot be attached to an unrelated appropriation. *Id.* Sections 20 and 66 do both of those things.

* * *

Sections 20 and 66 are classic riders. As such, the Governor was free to strike them from Senate File 517 under the item-veto amendment. The district court's decision on this issue should be affirmed.

## CONCLUSION

This Court should reverse the district court's ruling on the office-closure and the definition provisions. It should affirm the district court's ruling with regard to Sections 20 and 66. And it should order the district court to enter judgment in the Governor's favor.

Respectfully submitted,

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The true and actual amount paid for printing the foregoing Appellant's Final Brief was $75.05.

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The undersigned hereby certifies that he or a person acting on his behalf will file the attached Brief by hand delivering 18 copies to Clerk of the Iowa Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319 on January 30, 2012.

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## PROOF OF SERVICE

I certify that on January 30, 2012, I emailed and mailed a copy to the attorneys of record, who are listed below.

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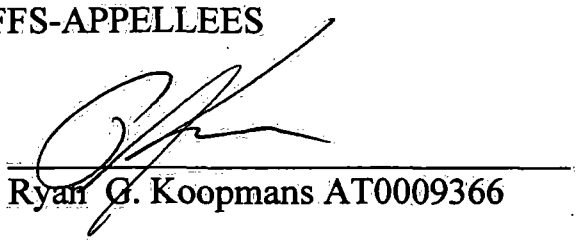

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